

S. POWELL CONSTRUCTION COMPANY,)	AGBCA Nos. 2004-119-1
)	2004-120-1
Appellant)	2004-121-1
)	2004-122-1
Representing the Appellant:)	2004-123-1
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

April 13, 2005

BEFORE POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge POLLACK.

These appeals arise out of Contract No. 50-3D47-9-1, Little Whitestick Channel Modification, between the U. S. Department of Agriculture, Natural Resources Conservation Service (NRCS), of Morgantown, West Virginia, and S. Powell Construction Company of Weirton, West Virginia. The appeals are from a final decision of the CO dated December 1, 2003, denying Powell's claims for additional costs and setting out a counterclaim by NRCS. The respective appeals are AGBCA No. 2004-119-1, work under the contract; AGBCA No. 2004-120-1, quantity variations; AGBCA No. 2004-121-1, miscellaneous work items; AGBCA No. 2004-122-1, sanitary sewer matters and; AGBCA No. 2004-123-1, NRCS counterclaim. Powell claimed total costs for all items of \$1,113,347.78. The counterclaim by NRCS was for \$521,865.75. The appeals were docketed on January 2, 2004.

On March 24, 2004, the Board received the first of two motions from the local sponsors of the water project, seeking to intervene as respondents. The first was a Motion to Intervene from the City of Beckley and its Sanitary Board. Thereafter, the Board received a similar motion from the Southern Conservation District. Finally, the Board received a memorandum from NRCS supporting the Board granting the requested intervention. Appellant opposed the motions, and as a result, the parties were requested to brief the matter. After reviewing the briefs, the presiding judge issued a Ruling, dated August 26, 2004, denying the motions to intervene.

Thereafter, under cover letter of October 8, 2004, NRCS filed an amended counterclaim, changing the overall amount sought by NRCS to \$528,956.34.

The parties continued to pursue matters. Under cover letter of December 16, 2004, the Board was notified that the parties had reached a settlement agreement and that once payment was made, Powell and NRCS would be submitting a joint motion to dismiss on both the Powell affirmative claims and the counterclaim by NRCS.

The parties thereafter filed a Motion for Dismissal with Prejudice, dated January 31, 2005, which covers all of the captioned appeals, including the affirmative claims and the counterclaim. The parties ask that the appeals be dismissed with prejudice.

DECISION

In accordance with the settlement of the parties and the joint Motion for Dismissal, the appeals are dismissed with prejudice.

HOWARD A. POLLACK

Administrative Judge

Concurring:

JOSEPH A. VERGILIO

Administrative Judge

ANNE W. WESTBROOK

Administrative Judge

Issued at Washington, D.C.

April 13, 2005